

Message Text

PAGE 01 STATE 227513

16

ORIGIN EB-06

INFO OCT-01 EUR-08 ISO-00 AGR-05 STR-01 HEW-02 CIAE-00

DODE-00 PM-03 H-01 INR-05 L-01 NSAE-00 NSC-05 PA-01

RSC-01 PRS-01 SP-02 SS-15 USIA-06 COME-00 /064 R

DRAFTED BY EB/OT/STA:MNAYOR:CLJ
APPROVED BY EB/OT/STA:JPCRAWFORD
USDA:WDOERING(DRAFT)
STR:BSTEINBOCK(DRAFT)
COMM:AWARNER(DRAFT)
PATENT OFFICE:DALLEN(DRAFT)
FDA:THOMPSON(DRAFT)
EB/CBA/BP:HWINTER(DRAFT)

----- 018569

R 161943Z OCT 74

FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

LIMITED OFFICIAL USE STATE 227513

E.O. 11652: N/A

TAGS: ETRD, CA

SUBJECT: PROPOSED CANADIAN REGULATIONS ON GEOGRAPHIC
APPELLATIONS

REF: OTTAWA 3255 AND PREVIOUS

1. EMBASSY REQUESTED TO DELIVER FOLLOWING NOTE TO APPROPRIATE GOC AUTHORITIES EXPRESSING CONCERN OVER EFFECTS OF IMPLEMENTATION OF PROPOSED REGULATIONS.

2. BEGIN TEXT: THE EMBASSY WISHES TO EXPRESS THE CONCERN OF THE UNITED STATES GOVERNMENT THAT IMPLEMENTATION OF THE PROPOSED REGULATIONS CONCERNING USE OF INDICATIONS OF GEOGRAPHIC ORIGIN WOULD HAVE AN ADVERSE IMPACT ON U.S. EXPORTS TO CANADA, PARTICULARLY THOSE OF WINE AND CHEESE. DURING 1973, THE UNITED STATES EXPORTED 259,000 GALLONS OF WINE TO
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 02 STATE 227513

CANADA, VALUED AT 832,000 DOLLARS, MORE THAN TO ANY OTHER COUNTRY. IN THE SAME YEAR, THE UNITED STATES SHIPPED 2,041,000 POUNDS OF CHEESE, VALUED AT 1,998,272 DOLLARS. A PORTION OF THIS TRADE IS IN PRODUCTS BOUND BY CANADA UNDER

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT).

3. IN ADDITION TO ITS EFFECT ON U.S. EXPORTS OF WINE AND CHEESE, THE PROPOSED REGULATIONS MAY HAVE AN ADVERSE IMPACT ON U.S. EXPORTS OF OTHER PRODUCTS IN THE CATEGORIES LISTED IN THE THREE SCHEDULES WHICH ARE A PART OF THE PROPOSED REGULATION (E.G., FOOD PRODUCTS LABELLED "SWISS" FOR A

CHOCOLATE INGREDIENT; TEXTILES LABELLED "MADRAS").

4. IT IS RECOGNIZED THAT AMONG REPRESENTATIONS WHICH CAN BE USED IN THE LABELLING OF FOODS, BEVERAGES AND OTHER PRODUCTS, ARE NAMES WHICH CONSTITUTE FALSE OR MISLEADING REPRESENTATIONS AS TO GEOGRAPHICAL ORIGIN OF A PRODUCT. IN THE UNITED STATES, THE USE OF SUCH NAMES IS SUBJECT TO REGULATION UNDER THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THE FEDERAL ALCOHOL ADMINISTRATION ACT AND OTHER STATUTES. THE UNITED STATES GOVERNMENT DOES NOT QUESTION THE APPROPRIATENESS OF THE PROPOSAL OF THE GOVERNMENT OF CANADA TO ADOPT REASONABLE REGULATIONS, IN THE CONSUMER INTEREST, TO PREVENT THE USE OF FALSE OR MISLEADING REPRESENTATIONS OF PRODUCTS MARKETED IN CANADA.

5. IN THE VIEW OF THE UNITED STATES GOVERNMENT, SUCH REGULATIONS SHOULD LIKEWISE BE SUBJECT TO EXCEPTIONS WHERE, AS A RESULT OF WELL-ESTABLISHED TRADE PRACTICES OR LONG USE, THE NAMES USED ON LABELS ARE NOT DECEPTIVE. THERE ARE, AT LEAST, TWO POSSIBLE KINDS OF EXTENUATING CIRCUMSTANCES WHICH SHOULD BE TAKEN INTO ACCOUNT IN THIS RESPECT.

6. FIRST, A GEOGRAPHICAL TERM MAY ACQUIRE SIGNIFICANCE AS A TRADEMARK SO THAT ITS USE IS NOT FALSE OR MISLEADING. A TERM MAY HAVE BEEN SO LONG AND EXCLUSIVELY USED BY A SINGLE MANUFACTURER OR PRODUCER THAT IT IS GENERALLY UNDERSTOOD BY CONSUMERS TO MEAN THE PRODUCT OF THAT MANUFACTURER OR PRODUCER. SOME WELL-KNOWN EXAMPLES OF THIS ARE "BUDWEISER" FOR BEER, "TABASCO" FOR PEPPER SAUCE, "CAPRI" LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 03 STATE 227513

FOR AUTOMOBILE, "LATOURAINE" FOR COFFEE, AND "CANADA DRY" FOR GINGER ALE. THIS EXCEPTION TO THE PRINCIPLE IS QUITE SIMILAR TO THAT WHICH OBTAINS IN THE CASE OF WORDS WHICH DESCRIBE CHARACTERISTICS OF PRODUCTS OTHER THAN THEIR GEOGRAPHICAL ORIGIN. THUS, FOR EXAMPLE, "ACQUAMARINE" IS PROTECTED AS A TRADEMARK FOR COSMETICS BASED ON ACQUIRED DISTINCTIVENESS, EVEN THOUGH ITS PRIMARY SIGNIFICANCE IS THAT OF COLOR, NOT NORMALLY CAPABLE OF A TRADEMARK SIGNIFICANCE. THE UNITED STATES GOVERNMENT BELIEVES THAT SIMILAR EXCEPTIONS ARE EQUALLY APPLICABLE IN CANADA AND THAT THEY SHOULD BE RECOGNIZED AS AN INTEGRAL PART OF THE REGULATIONS DEALING WITH THE SPECIFIC SUBJECT MATTER OF GEOGRAPHICAL

NAMES.

7. SECOND, AND PARTICULARLY SIGNIFICANT, ARE NAMES WHOSE MARKET SIGNIFICANCE IS GENERALLY UNDERSTOOD BY CONSUMERS TO INDICATE A PARTICULAR CLASS, KIND OR TYPE OF PRODUCT RATHER THAN TO INDICATE GEOGRAPHICAL ORIGIN. WHERE SUCH IS THE GENERAL UNDERSTANDING OF CONSUMERS, IT WOULD BE CONTRARY TO THEIR INTERESTS TO PROHIBIT THE USE OF SUCH

NAMES. A SIGNIFICANT PROPORTION OF THE UNITED STATES PRODUCTION OF WINES AND CHEESES, FOR EXAMPLE, HAS LONG BEEN MARKETED UNDER NAMES WHICH WOULD BE PROHIBITED BY THE PROPOSED REGULATIONS. THE FREE USE OF THESE NAMES IN THE UNITED STATES, AND ALSO IN CANADA, IS SOUNDLY BASED ON TRADE PRACTICES DATING BACK OVER MANY DECADES AND ARISES FROM THE FACT THAT PRODUCTION OF WINE AND CHEESE IN THE UNITED STATES ORIGINATED WITH IMMIGRANTS WHO BROUGHT WITH THEM THE TECHNOLOGY FROM THE WINE AND CHEESE PRODUCING REGIONS OF EUROPE. SINCE NO AMERICAN TRADITION OF WINE OR CHEESE EXISTED PRIOR TO THIS TIME, THE PRACTICE EVOLVED OF DESCRIBING THE CHARACTERISTICS OF A PARTICULAR AMERICAN WINE OR CHEESE BY COMPARING IT TO THE WELL-DEFINED VARIETIES PRODUCED IN EUROPE WHICH WERE FAMILIAR TO CONSUMERS. THUS, THESE NAMES BECAME RECOGNIZED BY CONSUMERS AS SIGNIFICANT INDICATIONS OF KIND OR TYPE RATHER THAN INDICATIONS OF GEOGRAPHICAL ORIGIN. THE PROPOSED REGULATIONS CONTAIN A SUBSTANTIAL NUMBER OF SUCH NAMES. A FEW EXAMPLES ARE GORGONZOLA, PROVALONE, MUNSTER AND NEUFCHATEL.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 227513

8. SOME GEOGRAPHICAL TERMS HAVE ACQUIRED WHAT MAY BE DESCRIBED AS HAVING A SEMI-GENERIC STATUS, RECOGNIZING THAT, WHEREAS A NAME HAS ACQUIRED GENERIC SIGNIFICANCE IN THE MINDS OF MOST CONSUMERS, IT IS NEVERTHELESS NECESSARY THAT IT BE ACCOMPANIED BY AN INDICATION OF THE TRUE GEOGRAPHICAL ORIGIN OF THE PRODUCT IN ORDER TO AVOID ANY POSSIBILITY OF CONSUMER DECEPTION. EXAMPLES OF THIS KIND OF SITUATION ARE CAMEMBERT, BRIE, EMMENTAL, GRUYERE, BURGUNDY AND CHABLIS.

9. IT IS THE CONSIDERED VIEW OF THE UNITED STATES GOVERNMENT THAT THE PROPOSED CANADIAN REGULATIONS DO NOT REFLECT THE ACTUAL SITUATION IN THE MARKET PLACE WITH RESPECT TO MANY OF THE NAMES ON THE VARIOUS SCHEDULES; AND THAT BY VIRTUE OF THE RECOGNIZED EXCEPTIONS TO THE GENERAL PRINCIPLE APPLIED IN THE CASE OF USE OF GEOGRAPHICAL TERMS, MANY OF THE NAMES WHICH WOULD BE PROHIBITED UNDER THE CANADIAN PROPOSED REGULATION ARE NOT, IN FACT, FALSE OR MISLEADING. AS TO THESE NAMES, PROHIBITING THEIR USE WOULD BE DETRIMENTAL TO CONSUMERS AS WELL AS TO PRODUCERS,

THERE BEING NO OTHER TERM AVAILABLE TO DESCRIBE THE
PRODUCT ADEQUATELY.

THE PROPOSED REGULATION ALREADY CONTAINS SOME LANGUAGE
WHICH SUGGESTS THAT EXCEPTIONS TO THE PROHIBITIONS ARE
CONTEMPLATED, I.E., "...SHALL BE DEEMED, UNLESS THE CON-
TRARY IS PROVEN, (UNDERLINE PRECEDING FIVE WORDS) TO

CONSTITUTE A FALSE OR MISLEADING REPRESENTATION..."
(UNDERLINING ADDED). IN VIEW OF THE IMPORTANCE OF THE
EXCEPTIONS TO CONSUMER INTERESTS, IT IS SUGGESTED THAT THE
PRINCIPLE EMBODIED IN THE FIVE ABOVE UNDERLINED WORDS BE
AMPLIFIED, PROVIDING SPECIFIC GUIDANCE TO MANUFACTURERS
AND PRODUCERS AS TO THE KIND OF EXCEPTIONS THAT WOULD BE
ADMITTED AND THE CRITERIA WHICH ARE TO BE APPLIED IN
PROVING THEM.

11. IT IS FURTHER SUGGESTED THAT THE REGULATIONS SHOULD
SET FORTH A MECHANISM BY WHICH AFFECTED COMPANIES AND
ASSOCIATIONS COULD, IN THE INTEREST OF CONSUMERS, SUBMIT
EVIDENCE IN SUPPORT OF EXCEPTIONS. THE PERIOD OF TIME
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 05 STATE 227513

PROVIDED FOR SUCH PROCEDURES SHOULD BE AMPLE. A PERIOD OF
NOT LESS THAN ONE YEAR IS SUGGESTED, CONSIDERING THAT THE
EFFECT OF THE REGULATIONS CONCERNS THE USE OF NAMES WHICH
HAVE BEEN FREELY USED IN THE UNITED STATES AND CANADA FOR
MANY YEARS. THE INTERESTS OF CONSUMERS WOULD NOT BE
SERVED BY A HASTY PROHIBITION OF NAMES TO WHICH THEY
HAVE BEEN LONG ACCUSTOMED. FURTHERMORE, A LEAD TIME PER-
MITTING THE PRESENTATION OF EVIDENCE IS URGED IN THE
INTEREST OF AVOIDING SEVERE DAMAGE TO LEGITIMATE U.S.-
CANADIAN TRADE IN THESE PRODUCTS.

12. IN VIEW OF THESE CONSIDERATIONS, IT IS SUGGESTED THAT
THE PROPOSED REGULATIONS BE REVISED TO PROVIDE FOR THE USE
OF CERTAIN GENERIC APPELLATIONS FOR PRODUCTS IMPORTED FROM
COUNTRIES IN WHICH SUCH APPELLATIONS HAVE BEEN IN TRADI-
TIONAL AND LEGAL USE OVER A LONG PERIOD OF TIME. TO THIS
END, THE UNITED STATES GOVERNMENT INITIALLY REQUESTS
THAT CERTAIN NAMES, INCLUDING, BUT NOT LIMITED TO THE
FOLLOWING, BE DELETED FROM THE VARIOUS SCHEDULES OF THE
PROPOSED REGULATIONS, AS HEREINAFTER INDICATED:

.----- . SCHEDULE III

WINES: BURGUNDY, CHABLIS, CHAMPAGNE, SAUTERNES,
SAUTERNE, TOKAY, MOSELLE.

CHEESES: GORGONZOLA, MUNSTER, NEUFCHATEL,

BEER: PILSNER

-,-----, . SCHEDULE IV

CHEESES: PROVOLONE

-,-----, . SCHEDULE V

WINES: CHIANTI, MALAGA, MARSALA, MOSEL, RHINE.

COTTON GOODS: MADRAS.

13. THE EMBASSY WOULD APPRECIATE THE OPPORTUNITY TO SUB-
MIT FURTHER COMMENTS, AS THE NEED ARISES, PRIOR TO THE
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 06 STATE 227513

TIME A FINAL DETERMINATION ON THE PROPOSED REGULATIONS IS
REACHED. END TEXT.

14. FYI: DEPARTMENT HAS A FALL-BACK POSITION IN EVENT
GOC DOES NOT REACT FAVORABLY TO REQUESTS EMBODIED IN NOTE.
FALL-BACK CONSISTS OF ASKING FOR WINES LISTED ON SCHEDULES
III AND V TO BE TRANSFERRED TO SCHEDULE IV. EMBASSY
REQUESTED TO MONITOR GOC REACTION AND INFORM DEPARTMENT OF
ALL DEVELOPMENTS AS THEY OCCUR. IF REACTION IS NEGATIVE,
DEPARTMENT WILL WANT TO REQUEST CONSULTATIONS. EMBASSY
SHOULD NOT ACT ON FALL-BACK POSITION UNLESS SPECIFICALLY
INSTRUCTED BY DEPARTMENT. END FYI. INGERSOLL

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 27 JUL 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CERTIFICATES OF ORIGIN, DIPLOMATIC NOTES, EXPORT CONTROLS, POLICIES, TEXT
Control Number: n/a
Copy: SINGLE
Draft Date: 16 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE227513
Document Source: ADS
Document Unique ID: 00
Drafter: EB/OT/STA:MNAYOR:CLJ
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D740295-0493
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741092/abbryzzc.tel
Line Count: 249
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: OTTAWA 3255 AND PREVIOUS
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 16 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 APR 2002 by ifshinsr>; APPROVED <19-Aug-2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> jms 971106
Subject: PROPOSED CANADIAN REGULATIONS ON GEOGRAPHIC APPELLATIONS
TAGS: ETRD, CA, US
To: OTTAWA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005